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DATE MAILED: 09/02/2004

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,326	09/17/2003	David J. Stroh	GP-303111	4203
7	7590 09/02/2004		EXAM	INER
CHRISTOPHER DEVRIES			SOLIS, ERICK R	
General Motors Corporation Legal Staff, Mail Code 482-C23-B21			ART UNIT	PAPER NUMBER
P.O. Box 300			3747	
Detroit, MI 48265-3000			DATE MAIL ED. 00/02/200	

Please find below and/or attached an Office communication concerning this application or proceeding.

	Applied No	Annie - Marie
	Application No.	Applicant(s)
	10/664,326	STROH, DAVID J.
Office Action Summary	Examiner	Art Unit
	Erick R Solis	3747
The MAILING DATE of this communication appeared for Reply	ppears on the cover sheet wi	th the correspondence address
A SHORTENED STATUTORY PERIOD FOR REP THE MAILING DATE OF THIS COMMUNICATION - Extensions of time may be available under the provisions of 37 CFR 1 after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a re - If NO period for reply is specified above, the maximum statutory perio - Failure to reply within the set or extended period for reply will, by statu. Any reply received by the Office later than three months after the mail earned patent term adjustment. See 37 CFR 1.704(b).	I. 1.136(a). In no event, however, may a reply within the statutory minimum of third d will apply and will expire SIX (6) MONute, cause the application to become AB	reply be timely filed ty (30) days will be considered timely. ITHS from the mailing date of this communication. BANDONED (35 U.S.C. § 133).
Status		
1) Responsive to communication(s) filed on	 •	
2a) This action is FINAL . 2b) ⊠ Th	is action is non-final.	
3) Since this application is in condition for allow	ance except for formal matt	ers, prosecution as to the merits is
closed in accordance with the practice under	Ex parte Quayle, 1935 C.D	. 11, 453 O.G. 213.
Disposition of Claims		
4) Claim(s) 1-19 is/are pending in the application	n.	
4a) Of the above claim(s) is/are withdr	awn from consideration.	,
5) Claim(s) is/are allowed.		
6)⊠ Claim(s) <u>1-19</u> is/are rejected.		
7) Claim(s) is/are objected to.		
8) Claim(s) are subject to restriction and	or election requirement.	
Application Papers		
9)☐ The specification is objected to by the Examir		
10)⊠ The drawing(s) filed on <u>17 September 2003</u> is	ः/are: a)⊠ accepted or b)□	objected to by the Examiner.
Applicant may not request that any objection to the	*	
Replacement drawing sheet(s) including the corre	•	
11) The oath or declaration is objected to by the E	examiner. Note the attached	Office Action or form PTO-152.
Priority under 35 U.S.C. § 119		
12) Acknowledgment is made of a claim for foreig	n priority under 35 U.S.C. §	119(a)-(d) or (f).
a) All b) Some * c) None of:		
 Certified copies of the priority documer 	nts have been received.	
Certified copies of the priority documer	nts have been received in A	pplication No
3. Copies of the certified copies of the pri	•	received in this National Stage
application from the International Burea		
* See the attached detailed Office action for a lis	t of the certified copies not	received.
Attachment(s)		
Notice of References Cited (PTO-892)	4) Interview S	iummary (P ⁱ TO-413)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s	s)/Mail Date
 Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08 Paper No(s)/Mail Date 	5) Notice of In 6) Other:	formal Patent Application (PTO-152)

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DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- 1. Claims 1,2,4-8,10-15 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Boverie et al (US Patent No. 5349932). This reference teaches controlling the torque output of an engine by calculating a desired air-per cylinder, desired APC (Boverie refers to it as air charge, $R_{\rm c}$) based on accelerator pedal position. A model (21) uses the $R_{\rm c}$ (desired APC) to formulate the throttle opening. A measured APC ($R_{\rm m}$) is used to adjust the throttle valve and correct any errors between actual and desired APC. See the abstract, col. 2, lines 3-23, col. 3, lines 3-21 and 46-68, col. 4, line 1-25. The air charge of the engine may be measured by a mass flow meter.
- 2. Claims 1-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Southern et al. See the abstract, col. 6, lines 23-39, lines 55-68, col. 7, lines 10-32.

Claim Rejections - 35 USC § 103

- 3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
 - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

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the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 3,9 and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Boverie et al. in view of Southern et al. Boverie et al applies as above. Boverie et al do disclose relying on engine speed to help formulate the opening of the throttle valve (see col. 5, lines 20-28). Boverie et al, however, do not appear to rely on ambient temperature or pressure in determining the throttle opening. Southern et al teaches an APC throttle control system wherein the atmospheric temperature and pressure are taken into consideration when deriving the throttle position. It would have been obvious to one of ordinary skill in the art to have taken atmospheric temperature and pressure when deriving the throttle position in Boverie et al's engine since this would have resulted in a more accurate and sophisticated system which could compensate for changes in ambient temperature and pressure.

Double Patenting

5. Claims 1-19 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-8,10-16,18-25,27-30 and 32 of copending Application No. 10/644,346. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter.

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Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erick R. Solis whose telephone number is (703) 308-2651. The examiner can normally be reached on Monday-Thursday.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0861.

Erick R. Solis Primary Examiner

Eigh R. Solir

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September 1, 2004